IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT BENCH JAIPUR

O R D E R

Rajasthan State Road Transport Corporation Vs.
Shri Pradeep Kumar Nagar & Another.

(SB Civil Writ Petition No. 3631/94)

Date of Order : 27.10.2006

Hon'ble Mr. Justice KS Rathore

Mr. Manish Bhandari, for the petitioner.
Mr. Suresh Kashyap, for the respondent workman.

Brief facts of the case are that the respondent no.1, the workman, was appointed as Booking Clerk at Chhepa Barod and he booked the Vehicle No. 7304 for Kalodiya Baran. The bus was checked by a Checking Party at the place just 1 km. away from the Booking Station. The bus was carrying 63 passengers and out of them, 37 complained that they were charged fare more than the fare fixed by the Corporation; 34 passengers complained that instead of Rs. 2/- per ticket, Rs.2.50 per ticket was charged and 3 passengers were charged Rs. 5/- instead

of Rs. 4/-. The checking party recorded the statement of the passengers and also made entry in the way bill of the bus and got the signatures of Conductor and the Driver.

The respondent was issued a charge sheet and enquiry was held against the workman. After the enquiry report was received which was examined by the Disciplinary Authority and it was decided to terminate the services of the respondent no. 1 on the charge of corruption and for approval of the termination order, the petitioner moved an application under section 33(2)(b) before the Tribunal but the Tribunal declined to accept the same and rejected the application vide order dated 18.1.94.

Aggrieving and dissatisfying with the order dated 18.1.94, the petitioner preferred this writ petition.

Learned counsel for the petitioner submitted that the Tribunal has got a very limited jurisdiction to see whether prima facie case for according approval has been made out by the

employer and complied with three conditions or not i.e. (i) whether the enquiry has been held; (ii) whether amount equal to one month wages has been paid and (iii) whether an application was made before the appropriate authority before whom the case is pending simultaneously with the orders of termination. But the Tribunal while exercising jurisdiction under section 33(2)(b) cannot function as an appellate authority.

Learned counsel for the petitioner further submitted that the Tribunal without considering the finding given by the enquiry officer and the evidence recorded during enquiry rejected the application. The Tribunal held that it is necessary that the passengers whose statements were recorded by the checking party should have been examined in the enquiry. The passengers had made complaints to the checking party and same had been recorded by the checking party and placed before enquiry officer. The statement had been proved by the evidence of

Badri Lal who was one of the member of the checking party and who had recorded the statement. It was not necessary to have examined all the members of the checking party and passengers.

In support of his submissions, learned counsel for the petitioner placed reliance on the judgment rendered by this Court in the case of “The Rajasthan State Road Transport Corporation Jaipur and Another Vs. The Industrial Tribunal, Jaipur & Another” rendered in (SB Civil Writ Petition Ho. 4166/02) and the judgment in the case of “Rajasthan State Road Transport Corporation Vs. Vinod Kumar Sharma & Another” reported in 2004(3) CDR 1781 (Raj.).

During the pendency of the writ petition, the respondent workman moved an application under section 33(2)(b) of the I.D. Act. The application was rejected by this Court on 18.12.2003 and at the time of issuance of the notice, this Court vide interim order dated 5.9.94 stayed the operation of the impugned order dated 18.1.94.

The learned counsel for the respondents submitted that the Industrial Tribunal has rightly rejected the application seeking approval of termination order. And in support of his submissions he placed reliance on the judgment in the case of “Shambu Nath Goyal Vs. Bank of Baroda & Others” reported in 1984 Factories Journal Reports Vol. 64 Page 37.

Having heard rival submissions of the respective parties and upon careful perusal of the order passed by the Industrial Tribunal, the Tribunal has observed in its judgment dated 18.1.94 that fair and proper enquiry was not conducted by the disciplinary authority as held

by the Hon'ble Supreme Court in the case of Binny Limited V. Their Workmen (S.C.) F.L.R. 1972(25) Page 74 as under:-

> “The record made by the enquiry officer amply demonstrates that the delinquent was not given a chance to cross examine a particular witness examination on behalf of the management on his further statement nor was he asked to state anything by way of explanation. The enquiry officer was under the impression that he could look into the past record of the delinquent without affording him an opportunity of explanation r testing by cross examining what was allege against him. On each occasion when a person was examined on behalf of the management, the Manager was at pains to ask the delinquent whether he wanted to put any questions. But when the evidence was given about his absenting himself without leave or permission and specially when he was accused of a similar insolent conduct in the past, the least he could have done was to have asked the delinquent whether he had any question to pout on the further

> evidence given and whether he had anything to say for himself in respect of what was alleged. It appears clear to us that the enquiry officer was alive of the fact that the delinquent had to be given an opportunity or cross examining a witness on his statement and that it was necessary also for him to find out whether the delinquent was accusing the witness of any bias or preconceived notion. As regards the proposition that it was for the delinquent to raise an objection when he found a point being made against him without an opportunity to him to give evidence by way of explanation each case must depend on its own facts and the circumstances of a particular case may show that no prejudice had been caused to the delinquent by any irregularity sought to be availed of by him".

Similarly, in the case of Shambhu Nath Goyal, Hon'ble the Supreme Court has held as under:-

> "It is not necessary that only the appointing authority or any authority superior to that authority can be the

disciplinary authority in regard to employees of a bank. On the other hand, the bank should decide which officer shall be empowered to take disciplinary action in the case of each office or establishment and also make provision for appeal against orders passed in such disciplinary matters to an officer or body not lower in status than the Manager. What is required by the para is that the names of the officer or body competent to pass the original orders or hear the appeals shall from time to time be published on the Bank's Notice Board.

Where a certain person has been appointed as the enquiry officer in the notice of enquiry and it is stated in the notice that any appeal from his order could be made to the Chief Agent, it can be inferred that the enquiry officer is constituted also as the disciplinary authority, as, otherwise, it would not have been stated in the notice that any appeal against his order, which naturally includes an order imposing punishment pursuant to the enquiry held by him should be presented to the Chief Agent of the

bank, especially when the concerned employee also understood the enquiry officer to be functioning also as the disciplinary authority and did not question his authority to award punishment but merely stated that the enquiry was arbitrary, biased and improper.

Though it has been held in a number of decisions of the Supreme Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the Industrial Tribunal by leading all relevant evidence before it and that a defective enquiry stood on the same footing as no enquiry, the application of the employer to seek permission of the Tribunal for availing the right to adduce further evidence to substantiate the charge or charges against the workman may be filed by the employer during the pendency of the proceedings in respect of an application made to the Tribunal under section 33 of the Industrial Disputes Act, 1947, to take action or to grant approval of action taken by the employer. But, when the

question arises in a reference under section 10 of the Act, after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry, there is no question of the employer filing any application for permission to lead further evidence in support of the charges framed against the employee, for, the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Tribunal after the reference had been receive and the employer has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Tribunal and could make the request for the opportunity in the written statement itself. If it does not do so at that stage, it cannot be allowed to do it at any later stage of the proceedings by filing an application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender, which he may not otherwise do. It is not as if, as and when it suits the convenience of the employer

> at any stage of the proceedings, he may make an application seeking such opportunity and the Tribunal is obliged to grant the same".

Thus, in view of the ratio decided by Hon'ble the Supreme Court in the cases of Binny Limited and Shambu Nath Goyal (supras), I am fully convinced with the observation made by the Industrial Tribunal that fair and proper enquiry was not conducted and thus the application filed by the petitioner under section 33(2)(b)has rightly been rejected. I find no illegality or error apparent on the face of the record and no interference whatsoever is required by this Court in the judgment dated 18.1.94.

Consequently, the writ petition fails being devoid of merit and same is hereby dismissed. Consequence thereof, the interim stay order dated 5.9.94 granted by this Court, stands vacated.

(KS RATHORE), J.